Independent Medical Review Regulations	COMMENTS 1st 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Section 9768.9(j)	What happens in the case where MPN is refusing treatment, IMR is applied for but the IMR response is not received within the timelines mandated by the Labor Code? What does the injured worker do for care during this time?	Sana Khan. M.D., Ph.D. April 6, 2005 e-mail	The employee may choose a new doctor from within the MPN.	None.
Section 9768.3	Objects to the disqualification because of an "accusation" or a "loss of staff privileges."	Hans Lee, JD California Medical Association April 7, 2005 written comment.	We disagree. Labor Code section 4616.4(a)(3)(A) requires that the physician be "privileged" and section 4616.4(a)(4)(C) states that the physician shall have no history of disciplinary action including loss of staff privileges. Because the injured worker is required to be examined by the IMR chosen by the AD, it is necessary to set forth stringent qualifications. Additionally, the physician may reapply when the accusation is no longer pending.	None.
Section 9768.8	Objects to the removal of a physician from the IMR list upon an accusation of a quality of care violation, fraud or felony crime.	Hans Lee, JD California Medical Association April 7, 2005 written comment.	We disagree. Because the injured worker is required to be examined by the IMR chosen by the AD, it is necessary to set forth stringent qualifications. Additionally, the physician may reapply when the accusation is no longer pending. Labor Code section 4616.4(a)(4)(C) states that the physician shall have no history of disciplinary action or sanctions	None.
Orthopaedic Specialty Codes Sections 9768.5 and	Approves of the added specialty codes on the IMR contract application (9768.5) but concerned that the codes on the application	Dianne Przepiorski California Orthopaedic Association	We disagree. We want to accommodate orthopedists who have subspecialized, but we don't want to	None.

9768.10	requesting an IMR (9768.10) has a more limited code selection.	April 12, 2005, written comment.	make the list confusing to injured workers. The AD will match the employee with the appropriate type of orthopaedic specialist.	
Section 9768.1	Recommends clarifying definition that "relevant medical records" does not include correspondence unrelated to the disputed treatment or diagnostic service, correcting reference in (a)(11)(C) of "diagnosis" to "diagnostic service" and adding to (D) the phrase, "with the disputed treatment or diagnostic service."	Brenda Ramirez CWCI April 14, 2005, written comment.	We disagree. The language in section 9768.1(a)(11)(A) is directly from Labor Code section 4616.4(d)(1). The language in (C) corresponds with the statutory language of Labor Code section 4616.3(c).	None.
Section 9768.4	Recommends adding "(6) Agree to render recommendation consistent with Labor Code section 4604.5."	Brenda Ramirez CWCI April 14, 2005, written comment.	We disagree. Section 9768.12 (a)(8) requires the IMR report to analyze and determine if the disputed health care service is consistent with the medical treatment utilization schedule or ACOEM, or other evidence based medical treatment guidelines.	None.
Section 9768.8	Recommends adding "(5) That the physician has failed to ender recommendations consistent with Labor Code section 4604."	Brenda Ramirez CWCI April 14, 2005, written comment.	We disagree. The contract (9768.5) requires the physician to agree to follow the medical treatment utilization schedule. Section 9768.12(a)(8) requires the reports to contain an analysis if the disputed health care is consistent with the medical treatment utilization schedule. Section 9768.8(a)(2) allows for the removal of the physician from the IMR list if the physician has not met the reporting requirements on more than one occasion.	None.
Section 9768.17	Modify last sentence of (b) as follows: "If the employee chooses to receive medical treatment with a physician outside the MPN,	Brenda Ramirez CWCI April 14, 2005, written	We disagree. Adding "disputed" to the sentence makes it confusing because once the IMR has made the	None.

	the treatment is limited to the disputed treatment recommended by the IMR or the disputed diagnostic service recommended by the IMR."	comment	recommendation, the treatment is no longer "disputed."	
Section 9768.11(a)(11)	Recommends clarifying definition that "relevant medical records" does not include correspondence unrelated to the disputed treatment or diagnostic service by adding phrase "regarding the disputed treatment or diagnostic service" and deleting words "who provided a treatment or diagnostic service to the injured employee in connection with the injury."	Jose Ruiz SCIF April 14, 2005 Written comment	We disagree. The language in section 9768.1(a)(11)(A) is directly from Labor Code section 4616.4(d)(1).	None.
Section 9768.1(a)(4)	The definition should remove the redundant reference to the reviewer's discretion to perform a physical examination. In fact, there is some argument to be made that this definition serves no useful purpose at all, since the plain meaning of the terms "in-person examination" and "physical examination" are easily understood from the context of the regulations.	Suzanne Guyan Costco April 15, 2005 Written Comments	We disagree. The definition of "in-person" exam clarifies the term. We disagree that the definition is redundant. Psychological examinations generally do not include a physical examination other than observation, so the terms physical examination and in-person examination are not synonymous.	None.
9768(a)(11)	There is at least an issue of whether the entire medical record is relevant to the IMR and whether this proposed language, while identical to the statute, fails to clarify what is relevant information. Given that the definition of "in-person examination" includes taking a history and discussing the medical condition with the injured worker, and further given that the employee may submit any other information to the reviewer upon receipt of the information the employer gives to the reviewer, it would appear to make more sense to limit the term "relevant information" to that information which is, in fact, relevant. In this case, because the regulation suggests that *all*	Suzanne Guyan Costco April 15, 2005 Written Comments	We disagree. The language in section 9768.1(a)(11)(A) is directly from Labor Code section 4616.4(d)(1). The prior physicians may have failed to consider information that was relevant. By limiting the definition to information previously considered, the IMR would be prohibited from reviewing relevant information that was previously overlooked.	None.

	medical information is relevant to the disposition of a disputed medical issue, the regulation lacks clarity because its terms are self-contradictory. Furthermore, this is potentially invasive of the privacy rights of the injured worker. Thus, only that information that was considered, regardless of whether the information related to the diagnosis or treatment in dispute, should be provided to the reviewer. While the proposed regulation clearly mirrors the statute, it should be further refined to make clear that this is not a mandate to send significantly more medical information to the reviewer than is in fact relevant.			
Section 9768.14	This record retention provision makes reference to "comprehensive medical reports", a term that may well have been borrowed from the QME process but is not appropriate for IMR. The regulation should require retention of all records obtained by or prepared at the request of the reviewer, but there should be no reference to a comprehensive medical report. There is no authority for this requirement, as that term is used in Government Code section 11349(b).	Suzanne Guyan Costco April 15, 2005 Written Comments	We disagree. Labor Codes section 4616.4(a) provides authority for the AD to contract with physicians to act as independent medical reviewer. Labor Code section 4616(g) provides authority for the AD to make regulations. The regulations require the IMR to retain the report prepared by the IMR. The other reports that were relied upon will be maintained by the responsible providers.	None.
Section 9768.14	This section requires the reviewer to retain the report, not the records, for five years. This frankly makes no sense. Given that proposed section 9768.13 allows the administrative director to destroy documents, arguably including the IMR report, after two years, why should the reviewer – who made not even be a reviewer five years after keeping a report – be required to keep them at all?	Suzanne Guyan Costco April 15, 2005 Written Comments	Because it is the physician who prepared the report.	None.

Section 9768.17	This section is an effort to codify the limitations on what medical services can be obtained if the IMR results in overturning the recommendation of the treating physician. Unfortunately, the statute this proposed regulation seeks to implement is not entirely clear either. For purposes of this regulation, the Division should consider being more expansive in its direction. For example, if the result of the IMR is that no additional treatment or diagnostic tests are necessary, such a conclusion should not affect a change of physician as contemplated in subdivision (i) of Labor Code section 4614.4. If the recommendation is to perform a specific treatment or diagnostic service, then that service should be provided by the physician of the injured worker's choice and treatment should then revert to the MPN. The more troublesome situation arises where the disputed service is a treatment modality or where the issue is a change in diagnosis and, consequently, a change in treatment plans. These scenarios should be addressed directly. The proposed regulation does not. One way to accomplish this is to state that the results of IMR do not effect a change of primary treating physician and that the injured worker should be advised, when the IMR report results in the opportunity to seek treatment outside the MPN, that the only way for the injured worker to change PTP is to do so within the MPN.	Suzanne Guyan Costco April 15, 2005 Written Comments	We disagree. The MPN regulations allow the employee to change treating physicians within the MPN. The IMR regulations clarify the employee's options if the IMR agrees with the disputed diagnosis or treatment. Per Labor Code section 4616.4, the employee may seek the disputed treatment or diagnostic service from a physician either within or outside the MPN.	None.
General	Health & Safety Code section 1374.33 authorizes the Department of Managed Health	Suzanne Guyan Costco	This comment goes beyond the scope of these regulations.	None.

	Care to publish IMR decisions once personal information has been redacted. Because the IMR process in the Labor Code is directly tied to the utilization schedule as referenced in Labor Code sections 4604.5 and 5307.27, the AD should consider publication of IMR decisions as practice guides for MPNs so that similar clinical situations are handled similarly. Furthermore, the AD should consider, in cases where IMR decisions are particularly noteworthy, of adopting such decisions as emergency treatment guidelines subject to review by the working group you have established on this issue. This is yet another way to ensure that evidence based medicine is a system wide rather than individual case objective.	April 15, 2005 Written Comments		